

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Monique West	Team: Squad #2	CCRB Case #: 201607710	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 09/01/2016 2:00 AM	Location of Incident: 1705 Linden Boulevard (Americas Best Value Inn)	Precinct: 73	18 Mo. SOL 3/1/2018	EO SOL 3/1/2018	
Date/Time CV Reported Thu, 09/01/2016 2:54 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/08/2016 11:05 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Matthew Cahill	01163	932397	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jonathan Taveras	30195	953469	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Matthew Cahill	Abuse: Sergeant Matthew Cahill stopped § 87(2)(b)	
B.SGT Matthew Cahill	Abuse: Sergeant Matthew Cahill stopped an individual.	
C.SGT Matthew Cahill	Abuse: Sergeant Matthew Cahill searched an individual.	
D.SGT Matthew Cahill	Abuse: Sergeant Matthew Cahill searched the vehicle in which § 87(2)(b) and an individual were occupants.	
E.SGT Matthew Cahill	Abuse: Sergeant Matthew Cahill frisked § 87(2)(b)	
F.SGT Matthew Cahill	Abuse: Sergeant Matthew Cahill searched § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On September 1, 2016, § 87(2)(b) filed the following complaint with the Internal Affairs Bureau (IAB), generating IAB log #16-31095. On September 8, 2016, this case was received by the Civilian Complaint Review Board (CCRB). § 87(2)(b) accepted mediation and on October 11, 2016, the case was sent to the Mediation Unit. The case was sent back to the Investigation Unit on December 12, 2016, after an unsuccessful mediation session. This prevented the investigation from being concluded within 90 days of the case having been received.

On September 1, 2016, at approximately 2:00 a.m., § 87(2)(b) and an unidentified individual were sitting inside of § 87(2)(b)'s car in the back parking lot of the Americas Best Value Inn, located at 1705 Linden Boulevard in Brooklyn, when they were approached by Sergeant Matthew Cahill and Police Officer Jonathan Taveras of the 73<sup>rd</sup> Precinct. § 87(2)(b) and the unidentified individual were asked to step out of the vehicle (**allegations A and B**). Sergeant Cahill searched the unidentified individual (**allegation C**). Police Officer Taveras, Sergeant Cahill and a third officer whom § 87(2)(b) could not describe searched § 87(2)(b)'s car (**allegation D**). Police Officer Taveras allegedly frisked and searched § 87(2)(b) (**allegations E and F**). § 87(2)(g), § 87(4-b)

§ 87(2)(b) No arrests were made and no summonses were issued.

### Mediation, Civil and Criminal Histories

- As previously discussed, on October 11, 2016, this case was sent to the Mediation Unit. The case was sent back for an investigation on December 12, 2016, after an unsuccessful mediation.
- As of January 6, 2017, § 87(2)(b) has not filed a Notice of Claim regarding this incident with the Comptroller's Office (Board Review 01).
- § 87(2)(b) has no criminal convictions.

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by and involving § 87(2)(b) (Board Review 02).
- Sergeant Cahill has been a member of the NYPD for 13 years and has had 22 CCRB allegations against him in nine cases with three substantiated allegations in two cases and § 87(2)(g), § 87(4-b) (see officer history).
  - In CCRB case #200507025, an allegation that Sergeant Cahill struck an individual with an asp was substantiated and charges were recommended. He was found not guilty in a DCT trial.
  - § 87(2)(g), § 87(4-b)
  - In CCRB case #201507838, allegations that Sergeant Cahill detained an individual and seized an individual's property were substantiated and a Command Discipline B was recommended. § 87(2)(g), § 87(4-b). The NYPD disposition has not been decided.

### **Potential Issues**

- § 87(2)(b) was only able to identify the friend he was with during the incident as § 87(2)(b) but provided a phone number for him. The undersigned attempted to contact § 87(2)(b) at that phone number; however, the man who answered the phone denied being § 87(2)(b) or knowing anything about the incident. § 87(2)(b) was informed of this contact attempt and confirmed that he provided the correct phone number for § 87(2)(b). He was asked to contact § 87(2)(b) and inform him to call or email the CCRB regarding whether he was willing to provide a statement. § 87(2)(b) never contacted the CCRB; therefore, the undersigned was unable to identify or contact the other victim in this case.
- On September 28, 2016, field team investigators visited Americas Best Value Inn and reviewed the surveillance system, determining that no cameras at the location covered the back parking lot where this incident occurred.
- Another police vehicle with additional officers arrived on scene during the incident and § 87(2)(b) alleged that one of these officers also searched his vehicle. Since it is undisputed that the vehicle search occurred, that these officers arrived after Sergeant Cahill, who was the supervisor on scene, and only took actions based on decisions Sergeant Cahill had already made, these officers were not interviewed.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- Since Sergeant Cahill, who was the highest ranking officer on scene, initiated the stop of § 87(2)(b) and the unidentified individual and was present for the resultant frisk and search as well as the search of the vehicle, all of these allegations are pleaded against Sergeant Cahill.

**Allegation A- Abuse of Authority: Sergeant Matthew Cahill stopped § 87(2)(b)**

**Allegation B- Abuse of Authority: Sergeant Matthew Cahill stopped an individual.**

**Allegation C- Abuse of Authority: Sergeant Matthew Cahill searched an individual.**

**Allegation D- Abuse of Authority: Sergeant Matthew Cahill searched the vehicle in which § 87(2)(b) and an individual were occupants.**

**Allegation E- Abuse of Authority: Sergeant Matthew Cahill frisked § 87(2)(b)**

**Allegation F- Abuse of Authority: Sergeant Matthew Cahill searched § 87(2)(b)**

On September 19, 2016, § 87(2)(b) provided a phone statement to the CCRB (Board Review 03). On September 22, 2016, § 87(2)(b) was interviewed at the CCRB. On September 28, 2016 and January 1, 2017, § 87(2)(b) provided additional information to the CCRB by telephone (Board Reviews 04 and 05, respectively). On October 6, 2016, Sergeant Cahill was interviewed at the CCRB. On December 21, 2016, Police Officer Taveras was interviewed at the CCRB.

It is undisputed that Sergeant Cahill and Police Officer Taveras approached § 87(2)(b)'s vehicle and asked him and his passenger to exit the vehicle. It is undisputed that § 87(2)(b) and his passenger were frisked. It is also undisputed that § 87(2)(b)'s vehicle was searched and no marijuana was vouchered. The primary dispute is whether there was a smell of marijuana emanating from § 87(2)(b)'s vehicle at the time Sergeant Cahill and PO Taveras approached it.

§ 87(2)(b) stated that he was sitting in his car with his friend, known to him only as § 87(2)(b) in the back parking lot of Americas Best Value Inn. They were waiting for his friend's girlfriend, who had entered the motel. § 87(2)(b) sat in the driver's seat while § 87(2)(b) sat in the rear passenger seat. § 87(2)(b) denied that he or § 87(2)(b) had been smoking marijuana in the vehicle or that he had ever smoked marijuana in the vehicle. He did not know whether § 87(2)(b) had smoked marijuana prior to entering his vehicle or if he smelled of marijuana. § 87(2)(b) stated that the officers did not explain to him why he was being stopped.

Sergeant Cahill stated that they drove into the rear parking lot as part of their routine patrol. In the parking lot, they smelled marijuana and saw a running car to their left and decided to approach it. As they approached the vehicle, the smell of marijuana increased. Upon reaching the car, the window was down and the smell was even stronger. Sergeant Cahill could not hear much of the conversation between § 87(2)(b) and Police Officer Taveras, because he was on the passenger's side of the car; however, he heard § 87(2)(b) say that they had smoked marijuana earlier but were not smoking now. § 87(2)(b) and the passenger were asked to step out of the car and were informed that they would be patted down. Sergeant Cahill patted down the front and sides of the pants of the passenger. He stated that he did not "search" him but did not recall whether he entered into any of his pockets. Sergeant Cahill stated that no contraband was found.

Police Officer Taveras corroborated Sergeant Cahill's statement in that he and Sergeant Cahill approached § 87(2)(b)'s vehicle because they smelled marijuana and his vehicle was the only one in the parking lot that was running. He also corroborated Sergeant Cahill's statement in that as they approached the vehicle, the smell of marijuana was stronger, making it obvious to him that the smell of marijuana was emanating from § 87(2)(b)'s vehicle. Police Officer Taveras added that upon approaching § 87(2)(b) he observed ashes and marijuana residue on § 87(2)(b)'s lap and his shirt. He described the ashes as looking like burned paper and the marijuana residue as being "greenish." Police Officer Taveras spoke to § 87(2)(b) who informed him that his friend called him and asked him for a ride which is why he was at the location. His friend had met a girl on a phone application and went into the motel with the girl. § 87(2)(b) informed PO Taveras that the male who was in the back of § 87(2)(b)'s vehicle was unknown to § 87(2)(b) and had arrived with the girl and decided to sit in the back of § 87(2)(b)'s vehicle until the girl returned. Police Officer Taveras asked § 87(2)(b) if the girl was a prostitute but § 87(2)(b) did not know.

Police Officer Taveras stated that a marijuana cigarette was found in the rear of the vehicle along with some marijuana residue. Police Officer Taveras did not recall whether he or Sergeant Cahill recovered the marijuana cigarette and did not know whether it belonged to § 87(2)(b) or the male in the back seat. When Sergeant Cahill asked Police Officer Taveras what they should do and Police Officer Taveras stated that he did not believe that they should summons § 87(2)(b) because he was cooperative and the amount of marijuana found was small. Therefore, § 87(2)(b) was not issued a summons.

It is well settled that the smell of marijuana emanating from a vehicle alone is sufficient to provide officers with probable cause to search the vehicle and its occupants. *People v Johnson*, 25 Misc. 3d 1214(A), (N.Y. Sup. Ct. 2009) (Board Review 06).

The smell of marijuana emanating from § 87(2)(b)'s vehicle would give officers probable cause to search § 87(2)(b) his passenger and his vehicle. However, § 87(2)(b) disputed the existence of the smell of marijuana emanating from his vehicle. Although Sergeant Cahill and Police Officer Taveras' accounts contradict in regards to whether any actual marijuana

was found in the vehicle, the investigation was unable to discredit their consistent account that there was a smell of marijuana emanating from the vehicle.

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

§ 87(2)(g), § 87(4-b)

[Redacted text block]

Squad: 2

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date